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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 07 2007
EAC 05 208 53441

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a "soloist (violin), teacher of music." The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a letter from her employer. For the reasons discussed below, the petitioner has not established her eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a five-year qualification as a soloist of an orchestra and the pedagogue from the [redacted] State Conservatory, evaluated as equivalent to a combined Bachelor and Master's degree in music performance. The director did not contest that the petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director concluded that the petitioner had not established the "intent" of her employment; thus, the director could not evaluate whether the proposed employment had substantial intrinsic merit or would be national in scope. The petitioner, however, specified on the petition that the proposed employment would be performing and teaching violin. In response to the director's request for additional evidence, the petitioner submitted a letter from the East End Arts Council asserting that the petitioner gives private music lessons through their Community School of the Arts. We are persuaded that music instruction has substantial intrinsic merit. On appeal, [redacted] Executive Director of the East End Arts Council, asserts that the school, "its programs, and the future of its students are absolutely national in scope." She explains that the school "offers the means by which the youth of one of the most populated New York City suburban areas can succeed

in the highly competitive national area of art, music and theater." She then discusses the difficulties in mastering music and the competitive nature of admission to top music colleges.

In *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 217, n.3, the Administrative Appeals Office discussed several examples where employment with substantial intrinsic merit would not be national in scope.

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, *while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest* for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. (Emphasis added.) We find that the reasoning in this footnote is applicable in this matter. The petitioner is giving private lessons to 13 students between the ages of 6 and 17. We find that the benefits of this work is so attenuated at the national level as to be negligible.

Finally, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

In support of the petition and in response to the director's request for additional evidence, the petitioner submitted her qualification from the [redacted] State Conservatory, evidence of her employment with the [redacted] Opera and Ballet State Academic Theater from 1978 through 2002; a letter from [redacted] discussing the Community School of the Arts and the petitioner's skills; [redacted] curriculum vitae; a letter from [redacted], General and Artistic

Director for Dancing Crane, Inc., discussing the petitioner's performances with and arrangements for that group; information about Dancing Crane and [redacted] evidence of the petitioner's membership in the Associated Musicians of Greater New York, a union; paychecks from the East End Arts and Humanities Council; a program for a Dancing Crane performance listing the petitioner but not specifying her involvement and promotional materials for the East End Arts Council's Community School of the Arts.

The petitioner's years of experience in her field and her membership in a local union are not persuasive. The regulations indicate that ten years of progressive experience is one possible criterion that may be used to establish exceptional ability. Similarly, membership in professional associations that suggest a degree of expertise significantly above that ordinarily encountered in the field is another criterion for exceptional ability. Because exceptional ability, by itself, does not justify a waiver of the job offer/alien employment certification requirement, arguments hinging on the degree of experience required for the profession or professional memberships, while relevant, are not dispositive to the matter at hand. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 222. Moreover, the petitioner has not explained why membership in a union sets her apart from other musicians making a living in this field.

[redacted]n asserts:

> [The petitioner] is a foremost specialist as an interpreter and musical arranger of Georgian and Russian traditional music and art songs. She brings a unique ability to combine a classical expertise with the traditional nuances for staging of folk drama and traditions for a modern audience. Her remarkable ear enables her to represent almost any genre as a musician, which makes her invaluable for our folk art presentations.

[redacted] does not explain how the petitioner's influence is evident beyond a local folk art music troupe. Dancing Crane was formed in 1996 and specializes in Georgian culture. According to the materials submitted, it is "the ensemble of choice for gatherings celebrating Georgian culture throughout the Northeast." The record, however, lacks media coverage of Dancing Crane or other evidence that its musical arrangements are influencing the field of music nationally.

[redacted] asserts:

> With her impressive resumé, talent and distinguished career in the Republic of Georgia, [the petitioner] brings significant benefits to our school. [The petitioner] has set herself apart as an outstanding teacher, notably improving her students' technical skills, performance techniques and overall musical ability. Through her training at the illustrious Tbilisi State Conservatory she bestows her students with a unique perspective. This specific style, something we don't see much of anymore, leads aspiring musicians to their fullest potential. Studying under [the petitioner] is an extraordinary opportunity. Music teachers with such excellent credentials are rare and crucial to the school's ability to continue to offer exceptional programs.

On appeal, [redacted] asserts that it is "a little-publicized but nonetheless well known fact that within the tight-knit world of classical music that, as a student, you will be light years ahead of the competition if you study with an Asian- or European-trained teacher."

It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221. The record lacks evidence that the petitioner has influenced the field of music instruction. For example, the record lacks evidence that the petitioner has authored influential articles on music instruction or that she gives lectures on the subject. Moreover, the record lacks evidence that, either in Georgia or the United States, an unusually high number of her students (or any at all) have gained notable success while under her tutelage.

Regardless of whether music instructors trained in Asia or Europe are more skilled, it remains that the petitioner must demonstrate her own individual track record of success with some degree of influence on the field as a whole. The record lacks evidence that she has successfully trained accomplished musicians in Georgia or the United States or that she has influenced the field of music instruction to any discernible degree.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.